



**Testimony to the New York City Conflicts of Interest Board (COIB) on
Proposed Rules for Enforcement Actions
(Chapter 2 pursuant to Charter section 2603(h))**

July 25, 2019

Good afternoon Chair Briffault and members of the Conflicts of Interest Board. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. Reinvent Albany is a government watchdog organization that advocates for open and accountable government. While we largely focus on Albany, we have an interest in strengthening ethics in New York City because the City serves as a model for better ethics laws and practices.

Reinvent Albany supported [Local Law 177 of 2018](#), which requires COIB promulgate rules for its advisory opinions that are binding on public servants generally and have interpretative value. We support COIB updating and clarifying its rules on its enforcement procedures to make its operations clear to the public.

COIB is repealing and replacing Chapter 2 of the Rules of the Board (“Procedural Rules for Hearings”) promulgated pursuant to the New York City Charter Chapter 68, section 2603(h). Section 2603(h) generally describes the process by which a public servant is informed of an alleged ethics violation, and the subsequent adjudication process.

Reinvent Albany generally believes that to ensure public confidence in government, there needs to be more transparency regarding allegations of ethics violations and how they are handled. We recognize the importance of protecting the reputation of public servants targeted by frivolous or unfounded complaints. However, we believe transparency is critical to measuring how actively ethics bodies are conducting enforcement, and needs to be prioritized. Our recommendations below for COIB’s rules emanate from this overarching belief.

Recommended Changes for Draft Rules

- 1. COIB should promulgate rules regarding what statistical information should be included in its annual report related to complaints, referrals, and their disposition.** Under section 2603(h)(7)(i), COIB is required to issue an [annual report](#) with “a statistical summary and evaluation of complaints and referrals received and their disposition” but may not disclose information that “would constitute an unwarranted invasion of privacy of the public servant.” COIB’s 2018 annual report contains valuable information on its work and [we commend COIB for placing its annual report data in the city’s Open Data portal](#). We believe the report can, however, make COIB’s ethics enforcement more transparent by including more critical information.

Reinvent Albany recommends the following additional statistical information be added to the annual report:

- **Number of complaints received and complaints dismissed by COIB. This information should be tracked and disaggregated by complaints filed by agencies and the public, and by alleged violation of law and subject matter.**
- **Number of COIB initial determinations that there is probable cause an ethics violation occurred**, as measured by Notices of Initial Determination of Probable Cause sent to respondents. One alternative would be making known the number of sustained determinations of probable cause after a respondent has addressed allegations of wrongdoing. JCOPE provides aggregate data in its annual report on the number of 15-day letters it issues to persons that are the subject of investigations.¹
- **Number of referrals to city agencies disaggregated by agency.** The number of referrals relative to the number of employees at any agency is highly unlikely to compromise the privacy of any public servant alleged to have violated ethics laws.
- **Number of referrals to city agencies in which neither the agency nor COIB ultimately took an enforcement action.**
- **Number of active cases (disaggregated by alleged laws violated, subject matter and by agency of the public servant)**, not just cases received and closed within a year. The data disclosed by COIB in its 2018 annual report shows that since 2008 more cases have been closed (4,498) than opened (4,919), making it impossible to tell how many active cases

¹ New York State Joint Commission on Public Ethics. 2018 Annual Report, pgs. 49-51. Available at: <https://jcope.ny.gov/system/files/documents/2019/04/2018-annual-report-compiled-final41019.pdf>

COIB currently has or if these numbers are accurate. JCOPE provides in its annual report matters processed during the year, in addition to open investigations and pending matters at year end.²

- **Statistics on the duration of cases including median, average, and percentages of cases taking particular periods of time.**
- **Types of violations (disaggregated by laws violated, subject matter and by agency of the public servant) for closed cases.**
- **Number of cases resolved by settlement alone and number of cases for which hearings were held by Office of Administrative Trials and Hearings (OATH) (disaggregated by laws violated, subject matter and by agency of the public servant).** JCOPE provides in its annual report aggregate data on the number of settlements and describes settlements that are completed.³
- **Statistics on penalties**, including average and median fines, for different types of violations (subject matter and law), disaggregated by settlement or formal hearing. COIB should indicate the number of penalties issued for each of the various types of penalties administered as specified in section 2606 of the Charter, including payment of any ill-gotten gains or benefits as a result of the ethics violation, forfeiture of public office or employment, and disqualifications from being elected, appointed or employed by the City.

This data should be tracked and reported publicly by COIB not only to inform the public on its operations and the state of ethical conduct in the City, but also for COIB to monitor and improve its operations. For example, COIB should conduct more training at agencies with a large proportion of violations or complaints, and review ethics laws most often violated.

- 2. COIB should clarify information to be included in its index of persons made available for public inspection.** Under section 2603(h)(5), COIB is required to “maintain an index of all persons found to be in violation of this chapter, by name, office and date of order. The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.” [The current index](#), available in the City’s Open Data portal, lists little information about the public servants who have been fined by COIB, not even including their full names. [We recognize more detailed](#)

² New York State Joint Commission on Public Ethics. 2018 Annual Report, p. 51. Available at: <https://jcope.ny.gov/system/files/documents/2019/04/2018-annual-report-compiled-final41019.pdf>

³ Ibid, pgs 51-52.

[information is provided for cases on the New York Law School's website](#), but the index should provide full names of ethics violators and a more complete summary statement of laws and ethics violated to make it more useful. The summaries at the top of the orders could be provided in the index, for example.

3. **COIB should identify the criteria for when its issues public and private warning letters.** COIB has issued 653 private warning letters since 2008, and 172 public warning letters. [COIB told the Gotham Gazette that letters are issued when there is not enough evidence to support a violation, legal reasons bar formal enforcement action, or an agency alone has taken disciplinary action on the matter.](#) Issuing letters only when COIB cannot impose penalties is good, but as it's unclear where COIB has the authority to issue warning letters in the law, we believe the Board should promulgate rules on issuing letters. We also think public letters should be issued as much as legally possible relative to private letters, and the rules should clarify when a letter is public or private.
4. **COIB should make all OATH reports public in which OATH has concluded a violation of law has occurred.** [The Joint Commission on Public Ethics \(JCOPE\) makes substantial basis investigation reports public even when penalties may not ultimately be assessed by JCOPE or the Legislative Ethics Commission.](#) New Rule 2-03(j)2 gives discretion to COIB regarding when to make OATH reports with findings of fact and conclusions of law public.
5. **COIB should make known what it will accept as mitigating factors when determining whether ethics violations occurred or assessing penalties.**
6. **COIB should promulgate rules clarifying how it imposes penalties when ethics violations are committed by the Mayor. We believe it should act independently, without consulting the mayor, if the mayor is the public servant in violation.** Under section 2603(h)(3), COIB is required to consult with the mayor before assessing penalties if the violating public servant is the head of an agency. The law is silent on how COIB handles a violation by the mayor himself. COIB should, at the very least, clarify its current procedures.

While we understand COIB does not have the authority to change 2063(h) via rule, COIB can make recommendations for legislative changes. **Reinvent Albany believes the Mayor and City Council should change section 2063(h) as follows:**

- 1. COIB should be authorized to impose penalties on City Councilmembers, and public servants who work for the City Council, in consultation with the City Council Speaker.** Under current law, COIB recommends penalties to the City Council when a violation of the ethics laws has occurred but cannot impose penalties even though the City Council approves members of COIB. We see no reason why penalties should be recommended to the City Council when COIB can impose penalties on the offices of the borough president, public advocate, or city comptroller. This is particularly problematic if the City Council Speaker is in violation of ethics laws, in which case the Speaker would have to decide on penalties for his or her own ethics violations.

- 2. COIB should be expressly authorized to negotiate settlements in lieu of formal hearings for ethics cases and to issue warning letters in very limited and prescribed circumstances.** We do not see in the law where COIB has the authority to conduct settlements, though we are not opposed to them as a policy matter. The same appears to be true for Warning Letters and Public Dispositions which, as used in limited circumstances by COIB, we also do not oppose as a policy matter.